

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Modernization of Media Regulation Initiative

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MB Docket No. 17-105

**COMMENTS OF ALPHA MEDIA LLC, EMMIS COMMUNICATIONS  
CORPORATION, IHEARTMEDIA, INC., LIBERMAN BROADCASTING, INC., NEW  
YORK PUBLIC RADIO, AND URBAN ONE, INC.  
("JOINT RADIO COMMENTERS")**

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Joint Radio Commenters<sup>1</sup> hereby submit these comments in response to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.<sup>2</sup> Joint Radio Commenters applaud the FCC's efforts to "advance the public interest by reducing unnecessary regulations and undue regulatory burdens that can stand in the way of competition and innovation in media markets."<sup>3</sup> In an effort to assist the Commission in this commendable endeavor, Joint Radio Commenters herein propose a number of changes to the FCC's rules that they believe are "outdated, unnecessary, or unduly burdensome"<sup>4</sup> and thus worthy of repeal or reform.

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<sup>1</sup> The Joint Radio Commenters are Alpha Media, LLC, Emmis Communications Corporation, iHeartMedia, Inc., Liberman Broadcasting, Inc., New York Public Radio, and Urban One, Inc.

<sup>2</sup> *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58, MB Docket No. 07-105 (rel. May 18, 2017) ("*Public Notice*").

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.*

## **I. THE COMMISSION SHOULD REDUCE REPORTING AND NOTIFICATION OBLIGATIONS.**

As Commissioner O’Rielly remarked at the initiation of this proceeding, “[n]otification requirements are an[] area where many updates should be made.”<sup>5</sup> Below, Joint Radio Commenters offer suggestions for ways in which the Commission should reduce reporting and notification requirements, many of which serve little, if any, public interest purpose, let alone one that justifies the burdens that they impose.

***Local Public Notice Requirements.*** Current rules require broadcasters to provide local public notice of applications in a number of categories, and, for many types of applications, mandate these announcements both on-air and in a newspaper.<sup>6</sup> Given the widespread availability and usage of the Internet in today’s age, however, the newspaper publication requirement is antiquated.<sup>7</sup> Moreover, certain of the on-air announcements must include detailed information regarding the station’s ownership (and, in the case of transfers or assignments, information regarding its proposed ownership), often requiring the devotion of significant amounts of airtime.<sup>8</sup> It would be far more helpful to listeners to have this information available online rather than in newspapers or in quickly read on-air announcements. As a result, the FCC should modify its local public notice requirements to: (1) eliminate the newspaper publication requirement entirely, (2) substitute an online posting requirement for newspaper publication, and (3) revise the on-air requirement so that a broadcaster can comply by announcing the type of application that has been

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<sup>5</sup> *Id.*, Statement of Commissioner Michael O’Rielly.

<sup>6</sup> *See* 47 C.F.R. § 73.3580.

<sup>7</sup> *See Public Notice*, Statement of Commissioner Michael O’Rielly.

<sup>8</sup> *See* 47 C.F.R. § 73.3580(f)(1).

filed and directing listeners to its website to obtain further information about the application. Taking these steps would reduce burdens on broadcasters while more closely aligning the Commission's rules with the way in which consumers receive information today and presenting information about applications in a *more* user-friendly and informative way. The FCC recognized as much in reforming its contest rules to permit briefer on-air announcements coupled with more fulsome online posting,<sup>9</sup> and should follow a similar path with respect to the local public notice requirements.

***Mid-Term EEO Reports (FCC Form 397).*** Current rules require a broadcaster to file a Broadcast Mid-Term Report (FCC Form 397) with the Commission at the midpoint of its license term.<sup>10</sup> The FCC Form 397 requires (1) a listing of a station or station employment unit's composition, (2) the names of individuals who should receive notices and are responsible for implementation, and (3) copies of the station or station employment unit's two most recent EEO Public File Reports.<sup>11</sup> While these requirements may have been appropriate to aid in the Commission's evaluation of station EEO practices prior to the implementation of electronic public files, they are, as Commissioner O'Rielly has observed, "duplicative" "now that EEO reports are filed with the Commission in the parties' online public files" or otherwise available on station websites.<sup>12</sup> Accordingly, the FCC should eliminate the Form 397 Mid-Term reporting obligation.

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<sup>9</sup> See *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, 30 FCC Rcd 10468 (2015) ("*Online Contest Rule Order*").

<sup>10</sup> See 47 C.F.R. § 73.2080(f)(2).

<sup>11</sup> See FCC Form 397, available at <https://transition.fcc.gov/Forms/Form397/397.pdf>.

<sup>12</sup> *Public Notice*, Statement of Commissioner O'Rielly. Certain radio stations are not required to fully transition to online public files until March 1, 2018, although these stations are required to post their EEO Public File Reports on their station websites. See 47 C.F.R. § 73.3526(b)(2) (public file deadlines); *id.* § 73.2080(c)(6) (requiring online posting). At a minimum, the FCC should exempt any station that has fully transitioned to the online public file system – whether in

***Posting of Station License.*** Current rules require stations to maintain a hard copy of their station licenses at the “principal control point.”<sup>13</sup> Because most radio stations have transitioned to dial-up or IP remote control systems, transmitters may be managed from a smartphone or PC at any location, rendering the concept of a principal control point outdated. In addition, the FCC’s public online databases contain copies of all broadcast station licenses. The availability of a station’s license through the FCC’s website, coupled with a requirement that a station produce a copy upon request, is more than sufficient to ensure ready access to the license. Accordingly, the Commission should update the current license posting requirement to mandate only production of a station’s license upon request.

***Ownership Reports (FCC Form 323).*** Current rules require broadcasters to file ownership reports at varying times: every two years (“Biennial Ownership Reports”), within thirty days of the grant of an application for an original construction permit (“Original Ownership Reports”), and within thirty days of consummating an authorized assignment or transfer of control (“Post-Consummation Ownership Reports”).<sup>14</sup> As an initial matter, because of certain idiosyncrasies in the way the FCC’s Form 323 and electronic filing interface function, these multiple filing obligations impose unnecessary burdens. For example, the current Form 323 does not allow the use of attachments to disclose information concerning individuals and entities with attributable interests, requiring unnecessary data entry when a searchable, standardized, attachment – as is

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compliance with the deadlines set by the Commission or voluntarily – from the obligation to file the Form 397. After March 1, 2018, the filing obligation should apply only to stations that have received waivers of the online public file rule.

<sup>13</sup> See 47 C.F.R. § 73.1230.

<sup>14</sup> See *id.* § 73.3615.

permitted for disclosure of other broadcast interests – would provide the same information in a more useful manner.

Joint Radio Commenters note that the Commission is in the process of transitioning ownership reporting from CDBS to LMS. Joint Radio Commenters understand – and greatly appreciate – that the FCC intends to take certain steps to streamline the ownership reporting process as part of this transition. In doing so, the Commission can and should address certain problems inherent in the current FCC Form 323 interface, including by permitting the use of a searchable, standardized attachment to disclose attributable parties. In addition, and particularly given the problems that occurred the last time the Commission updated the FCC Form 323, the agency should ensure that the LMS interface works properly and that broadcasters have sufficient time to test it prior to the current December 1, 2017, deadline for Biennial Ownership Reports. If there are problems with the new interface, that deadline should be postponed.

There is also no valid reason to require submission of ownership reports every two years. Instead, the Commission should revise its rules to require the filing of such reports following the grant of a new construction permit or consummation of a transaction requiring FCC approval; alternatively, the agency should require broadcasters to file these reports no more frequently than every four years. By decreasing the frequency of reporting, the FCC will lessen the burden on broadcasters while still ensuring that the agency and the public have access to reasonably current information concerning broadcast station ownership.

***Quarterly Issues/Programs Reports.*** Current rules require broadcasters to place in their public files on a quarterly basis a list of programs that have provided the most significant treatment of community issues during the preceding three-month period. These lists must include detailed information concerning the time, date, duration, and title of each program in which an issue was

covered.<sup>15</sup> Joint Radio Broadcasters respectfully submit that the Commission can change this requirement – which requires a tremendous amount of recordkeeping by station staff – without meaningfully reducing the information provided. Specifically, the FCC should require issues/programs lists to be placed in the public file on an annual (rather than quarterly) basis, and should permit broadcasters to provide (1) a brief summary of the issues treated by a station, and (2) a list of the programs in which the issues were treated, in lieu of details regarding date, time, and duration. This information would give the Commission and the public sufficient information regarding stations’ coverage of local issues, while reducing unnecessarily burdensome recordkeeping burdens on broadcasters.

## **II. THE COMMISSION SHOULD REFORM ITS RADIO TECHNICAL RULES IN SEVERAL RESPECTS.**

As Chairman Pai has noted, many of the rules governing broadcasters have become “yellowed and obsolete with age,” with some “stand[ing] in the way of innovation and investment that can benefit consumers.”<sup>16</sup> As discussed below, many technical rules that apply to radio fall into this category and are therefore ripe for repeal or modernization to reflect the realities of modern broadcast technology and the manner in which stations operate today.<sup>17</sup>

***Term of Experimental Broadcast Licenses.*** Current rules set a hard, five-year limit on experimental licenses in the broadcast service.<sup>18</sup> Other types of experimental licenses, however,

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<sup>15</sup> See *id.* § 73.3526(e)(12).

<sup>16</sup> *Public Notice*, Statement of Chairman Ajit Pai.

<sup>17</sup> As part of any proceeding initiated to revise the radio technical rules, Joint Radio Commenters urge the FCC to seek comment on additional ways that those rules can be modernized to promote innovation and investment in radio.

<sup>18</sup> See 47 C.F.R. § 5.71(c).



can be renewed for additional terms of up to five years.<sup>19</sup> The Commission should update its rules to treat broadcasters in a manner comparable to others authorized to operate under experimental licenses by permitting renewal for additional terms upon a showing of need to continue operating an experiment. When the FCC adopted the five-year term for broadcast experimental licenses in 2013, it did not provide any reason for this disparate treatment,<sup>20</sup> and no basis exists for it today. Providing greater flexibility in the terms of experimental authorizations will promote innovative use of radio spectrum, and will avoid artificially cutting off broadcast experiments that have the real potential to yield results that can benefit the radio industry and the public.

***Periodic Directional Antenna Performance Recertification for Method of Moments Stations.*** Under rules adopted in 2008, AM directional stations may opt to modernize their equipment and use Method of Moments (“MoM”) computer modeling to verify the performance of their antenna systems, rather than maintaining legacy equipment that can rely on the more relaxed requirements that apply to conventional stations. Current rules require such stations to recertify the performance of their directional antenna patterns at least once within every twenty-four month period.<sup>21</sup> In the nine years since the MoM proof rules were adopted, it has become apparent that this obligation is unnecessarily burdensome and should be eliminated or revised. The mandate to recertify performance every two years requires a broadcaster using the MoM proof

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<sup>19</sup> See *id.* § 5.71(a) (conventional experimental licenses can be issued for a license term of up to five years and then renewed for an additional term not exceeding five years upon an adequate showing of need to complete the experiment); *id.* § 5.71(b) (program, medical testing, and compliance testing experimental licenses are issued for a term of five years and may be renewed for up to five years upon an adequate showing of need).

<sup>20</sup> See *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules*, Report and Order, 28 FCC Rcd 758 (2013).

<sup>21</sup> See 47 C.F.R. § 73.155.

method to shut down its station's operations for several nights, incur the expense of hiring a consulting engineer, and take apart portions of its directional antenna array sampling system – all at a cost of tens of thousands of dollars per recertification. The dismantling of portions of the sampling system is also likely to cause drift, harming the accuracy of measurement of directional array parameters. Stations using the conventional method of proof are not subject to the same costly biennial obligation. Instead, a conventional station is only required to investigate directional antenna performance when its antenna monitor indicates out-of-tolerance readings or there is another reason to believe the pattern is out of limits.

No valid justification exists for this imbalance. The Commission has already tentatively recognized in the AM revitalization proceeding that eliminating or modifying the recertification requirement “would not result in inferior adjustments of AM directional antenna arrays[] and would eliminate some unnecessary expenses for directional antenna array maintenance by AM station licensees.”<sup>22</sup> Joint Radio Commenters respectfully submit that the burdens of the recertification requirement outweigh its benefits, and that, with nearly a decade of experience with the MoM proof rules, the time has come to treat stations using this method in the same manner as stations using the conventional method. To the extent that the Commission believes that some recertification requirement is appropriate, it should limit the scope of the obligation by, for example, requiring periodic antenna monitor recalibration and re-measurement of reference points, with full recertification mandated only if there is substantial drift in the reference points or if the recalibrated monitor reads out of tolerance. At the very least, the FCC should reduce the frequency

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<sup>22</sup> *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12175 (¶ 73) (2015). Because these comments raise issues related to the pending proceeding concerning revitalization of the AM radio service, they will be filed in MB Docket No. 13-249 as well as the above-captioned docket, consistent with the instructions contained in the *Public Notice*. See *Public Notice* at 1.

of full recertification measurements, requiring stations to take such measurements within twenty-four months prior to the deadline for filing the station's license renewal application.<sup>23</sup> By eliminating or relaxing the MoM proof rules in this fashion, the Commission will encourage additional stations to modernize their equipment and operations. This, in turn, will expand the positive effects that the FCC recognized at the time it initially adopted rules permitting reliance on the moments method – “an overall benefit to the AM service by substantially reducing the cost of a proof of performance, thereby encouraging AM licensees to properly maintain directional arrays.”<sup>24</sup>

***Indirect Method for FM Stations to Determine Operating Power.*** Current rules require FM stations that rely on the indirect method of determining operating power to use an efficiency factor that is based on prior licensee measurements or data from the transmitter manufacturer.<sup>25</sup> This rule dates from a time before modern solid-state FM transmitters and does not reflect today's operating realities. Now, the efficiency factor of a transmitter will vary due to automatic optimization of amplifier voltage, adaptive precorrection, and digital operating modes or injection. Moreover, transmitters themselves auto-generate information concerning efficiency. Accordingly, the Commission should update its rules to reflect modern operating realities by permitting an FM station utilizing the indirect power determination method to use the efficiency factor automatically generated by its transmitter.

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<sup>23</sup> See *id.* at 12175-76 (¶ 74).

<sup>24</sup> *An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 14267, 14271 (¶ 13) (2008).

<sup>25</sup> See 47 C.F.R. § 73.267(c).

***FM Stereophonic Sound Transmission Standards.*** Section 73.322 of the Commission's rules strictly delineates the permissible modulation of an FM signal.<sup>26</sup> The rule prohibits the use of single-sideband stereophonic carriers, which have recently become available and which produce perceivable improvements in audio quality, without an experimental broadcast license. The rule therefore imposes paperwork and other burdens on stations that wish to take advantage of the benefits of this new technology. As demonstrated by reports filed in connection with a number of experimental licenses permitting use of single-sideband stereophonic carriers, many stations have successfully used such carriers without causing interference or other issues for other stations. Accordingly, the Commission should update its rules to allow stations to use single-sideband stereophonic carriers without further authorization.

***Equipment Performance Measurements for AM stations.*** Current rules require AM stations to make equipment performance measurements on an annual basis.<sup>27</sup> This requirement has not been updated in many years and does not reflect the stability of current equipment. The requirements to perform equipment measurement upon installation of a new or replacement main transmitter<sup>28</sup> and to perform a measurement upon replacement of any audio processor intended to provide audio bandwidth limitation should be sufficient to ensure compliance with licensed operating parameters. If the Commission decides to retain a periodic measurement requirement, it should reduce the frequency to at most every three years. In the rare circumstance where an unstable transmitter might cause impermissible interference to another facility, the FCC's complaint process is available to address the situation.

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<sup>26</sup> See *id.* § 73.322.

<sup>27</sup> See *id.* § 73.1590(a)(6).

<sup>28</sup> See *id.* § 73.1590(a)(1).

***Authorized Bandwidth and Emissions.*** Current rules permit only analog, and not digital, modes of operation in the 450 MHz and 455 MHz remote pickup bands.<sup>29</sup> Remote pickup units (“RPUs”) are auxiliary facilities that broadcast stations may use to send transmissions from remote locations back to their studios for broadcast. Although the ubiquity of wireless and fiber networks has resulted in less widespread use of RPUs, the Commission nonetheless should update its rules to permit digital RPU operations. This will fuel the development of new uses for spectrum within the remote pickup bands and allow for increased spectral efficiency. In addition, it is common for broadcasters to operate two-way radio systems for cues and orders in these bands to support newsgathering operations, particularly during major emergencies when cellular networks may be overloaded or unavailable. Allowing digital emissions would provide parity with the land-mobile radio service and allow use of the many digital products available to business users of two-way radio systems.

### **III. THE COMMISSION SHOULD CONSIDER CERTAIN OTHER TARGETED CHANGES TO ITS RULES.**

***Station Identification.*** Current rules require broadcast station identification announcements to be made at the beginning and ending of each time of operation and hourly, as close to the hour as feasible, at a natural program break.<sup>30</sup> The current rules also mandate the inclusion of specific information, including station call sign and the community or communities of license that it serves, within these station identification announcements.<sup>31</sup> These aural announcements create audio clutter for listeners and require stations to unnecessarily interrupt long

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<sup>29</sup> See *id.* § 74.462.

<sup>30</sup> See *id.* § 73.1201(a).

<sup>31</sup> See *id.* § 73.1201(b).

form programming (such as coverage of sporting events) to make the required announcements. The Commission should therefore revise the station identification requirement to permit stations to make announcements periodically<sup>32</sup> – instead of close to the top of the hour – and should give licensees discretion in determining the specific content of announcements, provided that station call letters or a locally recognized brand or moniker are included.

Moreover, at least for FM stations, station identification announcements have become unnecessary to ensure that listeners know what station they are listening to. Today, an FM station can send a properly-set Radio Broadcast Data System Program Information Code or a RadioText message that includes a station’s call letters and community of license to an FM receiver, thereby ensuring that station identification information is visible on the receiver screen. Radio stations broadcasting in digital can also convey this same information by transmitting it as Program Associated Data at the top of the hour. The Commission should thus also update its rules to reflect these new technological innovations by permitting radio station identification to occur through means other than aural announcements.<sup>33</sup>

***Equal Employment Opportunities Reform.*** Current rules require broadcasters to further equal employment opportunities by, among other things, disseminating full-time vacancy notifications to “entitled sources.”<sup>34</sup> The touchstone of the Commission’s EEO rules, which Joint Radio Commenters vigorously support, is to ensure widespread dissemination of information

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<sup>32</sup> See *Online Contest Rule Order*, 30 FCC Rcd at 10474-75 (¶ 14) (maintaining requirement to broadcast on-air announcements concerning licensee-conducted contests and specifically declining to “adopt a more prescriptive requirement governing the frequency of” such announcements).

<sup>33</sup> See 47 C.F.R. § 73.1201(b) (permitting television stations to make station identification announcements visually *or* aurally).

<sup>34</sup> See *id.* §§ 73.2080(c)(1)(ii), (c)(2).

concerning job vacancies in broadcasting. However, any recruitment “safety valve” that the entitled source component of the EEO rules was intended to provide when it was adopted in 2002<sup>35</sup> has now been dwarfed by the explosion of job vacancy postings online.

In a recent Declaratory Ruling updating its wide dissemination policy to allow Internet-only outreach, the FCC acknowledged the pervasiveness of the Internet in connection with job searches, concluding that “online job banks are well-established, well-known and generally available to employers and job-seekers alike.”<sup>36</sup> This free and easy access to job vacancy information online wards off the potential for neglect of any segment of a broadcaster’s employment pool, which was the primary justification for the entitled source requirement when adopted fifteen years ago.<sup>37</sup> Equally notable, the FCC expected in 2002 that any entitled sources would be productive referral sources for candidates. Instead, most broadcasters find very little return on the significant investment in time and resources it takes to notify these sources of their open positions. Entitled sources remain on licensee recruitment source lists for years on end and yield few, if any, qualified candidates. Organizations that may have once requested notification of a broadcaster’s job postings so frequently change representatives that contact information expires. Any subsequent search for valid contact information most often yields a response that the organization does not recall asking to receive a station’s job notices in the first place. The entitled

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<sup>35</sup> *Review of the Commissions Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, 24053 (¶ 106) (“2002 EEO Order”).

<sup>36</sup> *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, Declaratory Ruling, MB Docket No. 16-410, FCC 17-47, ¶ 7 (rel. April 21, 2017).

<sup>37</sup> *See 2002 EEO Order*, 17 FCC Rcd at 24053 (¶ 106).

source requirement therefore falls within the category of media regulations that has outlived any practical usefulness and should, accordingly, be repealed.

***Enforcement Policy Reform.*** Joint Radio Commenters recognize and appreciate that the FCC has recently made significant improvements to its enforcement policies by, among other things, attempting to resolve complaints to allow for the processing and grant of applications and moving away from the use of tolling agreements. However, to the extent that the Commission still has a policy of placing a “hold” on broadcast applications when there is an enforcement complaint or investigation pending, it should eliminate that policy, provided that either (1) the licensee will continue to hold FCC licenses following the grant of the application,<sup>38</sup> or (2) the assignee or transferee of a license agrees to step into the shoes of the assignor or transferor.<sup>39</sup> This step will eliminate an unnecessary hurdle to the prompt grant of applications, thereby producing benefits for broadcasters and improving the FCC’s processes.

#### **IV. CONCLUSION**

For the foregoing reasons, Joint Radio Commenters urge the Commission to eliminate or modify its rules as set forth above.

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<sup>38</sup> In this situation, the Commission would remain free to take enforcement action against the licensee. *Cf.* 47 U.S.C. § 503(b)(5) (requiring, in the case of persons or entities that do not hold FCC licenses, issuance of a citation and a repeat violation before a forfeiture can be assessed).

<sup>39</sup> *See Stockholders of CBS Inc. (Transferor) and Westinghouse Electric Corporation (Transferee)*, 11 FCC Rcd 3733, 3749 (¶ 33) (1995).



Respectfully submitted,

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